

ISSUE

May an organization having no financial support and filing its notice under section 508(a) of the Internal Revenue Code more than 15 months after the end of the month it was organized obtain an advance ruling treating it as described in sections 170(b)(1)(A)(vi) and 509(a)(1) during an advance ruling period beginning on the date it becomes exempt from federal income tax under section 501(c)(3)?

FACTS

The organization received no financial support from December 28, 1973, the date it was organized exclusively for purposes within section 501(c)(3) of the Code, through May 1, 1976, the date it applied to the Internal Revenue Service for recognition of exemption from federal income tax under section 501(c)(3). It requested an advance ruling under section 1.170A-9(e)(5) of the Income Tax Regulations in order to be treated as described in sections 170(b)(1)(A)(vi) and 509(a)(1) during an advance ruling period. Pursuant to section 1.170A-9(e)(5), it established that it could reasonably be expected to meet the requirements of section 1.170A-9(e)(2) or (3). It is not an organization described in section 508(c)(1)(A) or 508(c)(2) to which section 508(a) is not applicable. It is not an organization described in section 509(a)(3) or (4).

LAW AND ANALYSIS

Section 508(a) of the Code provides that an organization, other than one described in section 508(c), organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3) unless it has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status.

Section 1.508-1(a) of the regulations provides, in part, that an organization seeking exemption under section 501(c)(3) of the Code must, within fifteen months from the end of the month in which it was organized, give the Commissioner notice that it is applying for exemption. If it fails to give notice within this period, it will be treated as exempt, provided it otherwise qualifies, only from the date it files its application constituting such notice.

Section 508(c)(1)(B) of the Code provides that section 508(a) shall not apply to any organization which is not a private foundation under section 509 and whose gross receipts in each taxable year are normally not more than \$5,000.

Section 509 of the Code provides that an organization described in section 501(c)(3) is not a private foundation if it

is described in section 509(a)(1), (2), (3) or (4).

Rev. Rul. 77-207, 1977-1 C.B. 152, holds that if, pursuant to section 508(a) of the Code, an organization's exemption from federal income tax under section 501(c)(3) is effective only from the date it filed an application for recognition of exemption, such organization is neither described in section 501(c)(3) nor classifiable as a private foundation under section 509 prior to the date as of which, pursuant to section 508(a), it is recognized as exempt from federal income tax under section 501(c)(3).

Rev. Rul. 77-208, 1977-1 C.B. 153, holds that if, pursuant to section 508(a) of the Code, an organization is exempt from federal income tax under section 501(c)(3) effective only from the date it filed an application for recognition of exemption, it is considered a new organization as of that date and may obtain an advance ruling treating it as described within sections 170(b)(1)(A)(vi) and 509(a)(1), provided, pursuant to section 1.170A-9(e)(5) of the regulations, it can reasonably be expected to meet the requirements of section 1.170A-9(e)(2) or (3).

The organization in the present case received no financial support prior to May 1, 1976, the date it applied for recognition of exemption. For this reason, it was not described in section 170(b)(1)(A)(vi) of the Code on that date and, therefore, was not excepted by section 508(c)(1)(B) from the notice requirement of section 508(a). It follows that, pursuant to the holding in Rev. Rul. 77-207, the organization was neither exempt under section 501(c)(3) nor a private foundation as defined in section 509(a) prior to the date the notice was filed; and, pursuant to the holding in Rev. Rul. 77-208, it is treated as a new organization as of the date the notice was filed.

HOLDING

Since the organization has established that it can reasonably be expected to meet the requirements of section 1.170A-9(e)(2) or (3) of the regulations, it may obtain an advance ruling treating it as described in sections 170(b)(1)(A)(vi) and 509(a)(1) of the Code during an advance ruling period beginning on May 1, 1976, the date on which the section 508(a) notice was filed and the date as of which it is treated as a new organization and recognized as exempt under section 501(c)(3).